

**FILED**

APR 23 2008

RICHARD W. WIENING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 MIGUEL A. ALFARO, PRO. SE.  
2 SALINAS VALLEY STATE PRISON  
3 FACILITY A-4 III-U  
4 P.O. BOX 1050 SOLEDAD, CA, 93960-1050  
5 F-17175

E-filing

6  
7 UNITED STATE DISTRICT COURT.  
8 NORTHERN DISTRICT OF CALIFORNIA. SI

9  
10  
11 MIGUEL A ALFARO

ON

08.

2114

12 V.S

13 M.S. EVANS, WARDEN

MEMORANDUM OF  
POINTS AND AUTHORITIES

14  
15 INTRODUCTION. I

(PR)

16  
17  
18 PETITIONER BRINGS CLAIMS TO THE COURT TO CONTEND.  
19 THE USE OF ENHANCEMENT. CALIF. P.C. # 667. A PETITIONER  
20 FULLY ACCEPTS THE CHARGES OF TERRORIST THREATS CALIF P.C.  
21 # 422, AND FIRST DEGREE BURGLARY CALIF P.C. # 460 A.  
22 CALIFORNIA PENAL CODE SECTION 667.5 A STATES IN  
23 FULL. NO ENHANCEMENT SHALL BE IMPOSED FOR ANY PRIOR  
24 SERVED 10 YEARS AGO OR MORE AND REMAINED FREE OF BOTH  
25 PRISON CUSTODY AND THE COMMISSION OF AN OFFENCE  
26 WHICH RESULTS IN A FELONY CONVICTION.

PARTIES II.

PETITIONER MIGUEL A ALTARO C.D.C.F. 17175  
CURRENTLY HOUSED AT SALINAS VALLEY STATE PRISON.  
FACILITY A 4 III-U P.O BOX 1050  
SOLIDAD CA 93960-1050.

M.S. EVANS WARDEN. SALINAS VALLEY STATE PRISON  
31625 HIGHWAY 101 P.O BOX 1020 SOLIDAD CA 93960

SENTENCING JUDGE. STEPHEN M. HALL SUPERIOR  
COURT OF CALIFORNIA COUNTY OF SAN MATEO.

DISTRICT ATTORNEY. MORRIS MAYA SUPERIOR  
COURT OF CALIFORNIA COUNTY OF SAN MATEO.

P  
PRIVATE DEFENDER PROGRAM. STEVEN CHASE 333  
BRADFORD STREET REDWOOD CITY CA 94063.

APPELLANT ATTORNEY. DON GUINOZA 411 SUTTER  
STREET. P.M.B. 1622 SAN FRANCISCO CA 94104.

STATEMENT OF FACTS III

ON MARCH 3, 2006 MIGUEL A ALTARO WAS SENTENCED TO  
TEN YEARS AND FOUR MONTHS BY STEPHEN M HALL JUDGE.  
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO.  
CASE NO. SC059091. BASE TERM OF SENTENCING IS

1 FOUR YEARS. THE ADDITIONAL SIX YEARS AND FOUR  
2 MONTHS ARE FOR ENHANCEMENTS.

3 PETITIONER FULLY ACCEPTS THE CONVICTION OF FIRST  
4 DEGREE BURGLARY CALIF. P.C. 460.A ALONG WITH TERRORIST  
5 THREATS. CALIF P.C. 422.

6 PETITIONERS DEFENDING COUNSEL. STEVEN CHASE. FAILED.  
7 TO BRING TO THE COURTS ATTENTION. THAT THE USE OF.  
8 CALIF. P.C. 667.A DID NOT APPLY TO MIGUEL A ALFARO.  
9 THIS IS THE FIRST OMISSION OF STEVEN CHASE. STEVEN  
10 CHASE'S FAILING PERFORMANCE CONTINUED WITH FAILURE  
11 TO BRING TO THE COURTS ATTENTION MIGUEL A ALFARO  
12 PRIOR CONVICTION WAS FROM SEPTEMBER 1983. SEPTEMBER  
13 1983. TO MARCH 3. 2006. IS A DIFFERENCE OF 19. YEARS  
14 6 MONTHS. MIGUEL A ALFARO'S LAST DATE OF PRISON.  
15 CUSTODY WAS MAY 6. 1994. MIGUEL A ALFARO'S CURRENT.  
16 CONVICTION DATE IS FEBRUARY 2005. A TOTAL OF TEN  
17 YEARS AND NINE MONTHS. FREE OF PRISON CUSTODY.  
18 CALIFORNIA PENAL CODE SECTION 667.5A STATES.  
19 NO ADDITIONAL TERM SHALL BE IMPOSED UNDER THIS.  
20 SUBDIVISION. FOR ANY PRISON TERM SERVED PRIOR TO A  
21 PERIOD OF TEN YEARS IN WHICH THE DEFENDANT.  
22 REMAINED FREE OF BOTH. PRISON CUSTODY AND THE  
23 COMMISSION OF AN OFFENCE WHICH RESULTS IN A  
24 FELONY CONVICTION.

25 STEVEN CHASE. FAILED TO PERFORM. THE DEFENDANT  
26 WOULD HAVE A MORE FAVORABLE. RESULT IN THE ABSENCE  
27 OF STEVEN CHASE.

28 ON AUGUST 15. 2006 MIGUEL A ALFARO. APPEALED.



1 This decision with the assistance of DON WEINZA  
 2 APPELLANT ATTORNEY. THIS APPEAL TOOK PLACE AT  
 3 COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST  
 4 APPELLATE DISTRICT DIVISION FOUR. CASE # A113167.  
 5 THROUGHOUT THE PRECEDING OF THE APPEAL DON WEINZA  
 6 APPELLANT ATTORNEY FAILED TO ACT IN A MANNER TO BE  
 7 EXPECTED OF A REASONABLY COMPETENT ATTORNEY. THE  
 8 EXACT FAILURE TO PERFORM IS DON WEINZA WAS NOT  
 9 DILIGENT IN RESEARCH TO PROVIDE A MORE FAVORABLE RESULT.  
 10 FOR THE APPELLANT. THIS RESEARCH INCLUDES THE USE OF ALL  
 11 MATERIALS AVAILABLE. SUCH MATERIALS ARE CALIFORNIA.  
 12 PENAL CODE ALONG WITH PRACTICE AND PROCEDURES 7<sup>TH</sup> ED.  
 13 BOTH OF THESE BOOKS PROVIDE THE PROCEDURE FOR THE  
 14 USE OF "ENHANCEMENTS". BECAUSE OF PRIORS THE APPELLANT.  
 15 ATTORNEY NEVER BROUGHT BEFORE THE COURT OF APPEAL A  
 16 PROPER DEFENCE ALLOWING A MORE FAVORABLE RESULT FOR  
 17 MIGUEL A ALFARO THIS APPEAL WAS DENIED.  
 18 CALIFORNIA PENAL CODE SECTION 667. 5. A ENHANCEMENT.  
 19 OF PRISON TERMS. FOR NEW OFFENSES, STATE NO ADDITIONAL  
 20 TERM SHALL BE IMPOSED IF PERSON REMAINED FREE OF BOTH.  
 21 PRISON CUSTODY AND ANY OFFENSE THAT RESULTED IN A  
 22 "FELONY" CONVICTION FOR A PERIOD OF "TEN YEARS" PRACTICE  
 23 AND PROCEDURES. 7<sup>TH</sup> ED. SECTION 35.19 STATES THE "TEN"  
 24 "YEAR" LIMITATION ON WHICH A PRIOR FELONY CAN BE USED.  
 25 BOTH DEFENDING ATTORNEYS FAILED TO BRING BEFORE  
 26 THE COURT THAT MIGUEL A ALFARO DID NOT MEET THE  
 27 CRITERIA. UNDER WHICH HE WAS SENTENCED A ADDITIONAL  
 28 "FIVE YEAR" ENHANCEMENT."

1 DUE TO THE FACT A JUDGE CAN NOT GIVE LEGAL  
 2 ADVICE AND DUE TO THE FACT THE ATTORNEYS did NOT  
 3 PRESENT CALIF P.C. SECTION 667.5A AND STRESS THE  
 4 "TEN YEAR" TIME LIMITATION ON PRIOR ENHANCEMENTS."  
 5 MIGUEL A ALTARO IS SERVING A ADDITIONAL "FIVE YEARS"  
 6 IN STATE PRISON "UNLAWFULLY"

#### 7 8 CONTENTIONS IV

9  
 10 PETITIONER CONTENDS THE USE OF PRIOR ENHANCEMENTS  
 11 UNDER CALIF PENAL CODE SECTION 667.A PETITIONERS LAST  
 12 CONVICTION WAS SEPTEMBER 1983. A PERIOD OF 19 YEARS.  
 13 6 MONTHS. PETITIONERS LAST DATE OF PRISON CUSTODY WAS  
 14 MAY 6, 1994. A PERIOD OF TWELVE YEARS FREE OF PRISON  
 15 CUSTODY.

16 CALIFORNIA PENAL CODE SECTION 667.5A STATES NO  
 17 ADDITIONAL TERM SHALL BE IMPOSED UNDER THIS SUBDIVISION  
 18 FOR ANY PRISON TERM SERVED PRIOR TO A PERIOD OF TEN YEARS"  
 19 IN WHICH THE DEFENDANT REMAINED FREE OF BOTH PRISON  
 20 CUSTODY AND THE COMMISSION OF AN OFFENCE WHICH  
 21 RESULTS IN A FELONY CONVICTION. PRACTICE AND PROCEDURE  
 22 7<sup>TH</sup> SECTION 35.19 STATES THE TEN YEAR LIMITATION ON  
 23 WHICH A PRIOR FELONY CAN BE USED. PRACTICE AND  
 24 PROCEDURE SECTION 35.29 DEFENDANT CAN CHALLENGE.  
 25 BECAUSE OF THE "TEN YEARS" FREE OF CUSTODY AND  
 26 CONVICTIONS PETITIONER BRINGS CLAIM OF INEFFECTIVE.  
 27 COUNSEL. PEOPLE V. POPE. 1979 23.C 3d 412 PEOPLE V.  
 28 FOSSEL 1983. 33 C 3d 572.

PRAYER FOR RELIEF V.

PETITIONER PRAYS TO THE COURT FOR RELIEF WITH  
THE REQUEST OF A REVERSE OF A FIVE YEAR  
ENHANCEMENT SENTENCE IMPOSED BY JUDGE.  
STEPHEN M. HALL SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN MATEO. CASE NO. SC059091.

MIGUEL A ALFARO

*Miguel Alfaro*

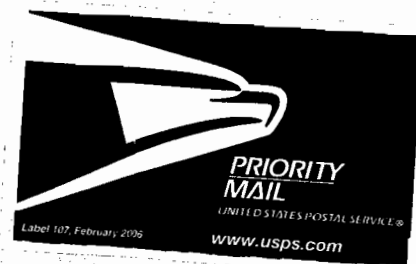
APRIL 18. 2008

MIGUEL ALFARO F17175  
SALINAS VALLEY STATE PRISON  
FACILITY A 4-III-U  
P.O. BOX 1050  
SOLEDAD CA 93960 1050



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